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Attorneys for Defendant
ROWLAND MARCUS ANDRADE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROWLAND MARCUS ANDRADE,

Defendant.

CASE NO.: 3:20-CR-00249-RS-LB

**DECLARATION OF KERRIE C.
DENT IN SUPPORT OF
DEFENDANT ANDRADE'S STATUS
REPORT REGARDING DISCOVERY
AND RENEWED REQUEST FOR
COMPLIANCE DATE**

Date: May 18, 2023

Judge: Hon. Laurel Beeler

DECLARATION OF KERRIE C. DENT

Kerrie C. Dent, counsel for Defendant Marcus Andrade, states as follows:

1. I am one of the lawyers representing Defendant Marcus Andrade in the above-captioned matter. I file this declaration in support of Mr. Andrade's Status Report about discovery.

2. I have personal knowledge of the discovery disputes and related correspondence between the government and defense counsel and, if called as a witness in this matter, could competently testify to the matters stated in this Declaration. If the Court would like to see any of the communications referenced here, I will provide copies upon request.

3. The government produced to us an image of the phone of Jack Abramoff, Andrade's alleged co-schemer, in May 2022. In early December 2022, I determined that some of the communications from the phone that were summarized by the case agents in 302 reports were not visible on the version of Abramoff's phone that was produced to us. On December 9, 2022, I emailed AUSAs Weingarten and Dawson to inform them that some of the group chat communications between Jack Abramoff and Alexander Levin were missing from the Cellebrite of Abramoff's iPhone that the government produced. After some back and forth with the government, they produced certain missing messages, but questions remained about which additional communications were missing from the Cellebrite files we received.

4. On March 6, 2023, AUSA Dawson emailed me that the government was "preparing to produce a complete version of Jack Abramoff's phone, with only potentially privileged materials filtered out. As I mentioned on the phone last week, while our search warrant authority expired long ago, we have obtained consent to access the rest of the phone, and we will produce it to you."

5. On March 8, 2023, my co-counsel Cindy Diamond and I had a meet and confer call with AUSAs Dawson and Highsmith. During that call, AUSA Dawson confirmed that he would be producing the full version of Abramoff's phone. When I asked him whether he could tell me the likely timing of the government's production of Abramoff's phone, he responded that the files were sitting on his desk and the production would be made in the next day or so.

1 6. The government also explained in a March 8, 2023, email that the material of one
2 law firm and two lawyers -- Arent Fox LLP, Peter Zeidenberg, and Robert Abramoff -- had been
3 removed for "potential privilege" from the complete Cellebrite files of Abramoff's phone in its
4 possession. In an effort to compromise on how to deal with the material that had been removed
5 as potentially privileged, my colleagues and I proposed that, for now, the Arent Fox and
6 Zeidenberg documents could remain withheld, but that the Robert Abramoff materials should be
7 reviewed, with all non-privileged documents being produced. The Court agreed with this
8 approach. Dkt. 165 at 10:19-25. It was in that context that we asked the court to rule on whether
9 the communications with Robert Abramoff (one of the lawyers) should be produced -- a narrow
10 issue based on the understanding that the rest of the image (except for the two other attorney-
11 client privilege claims) would soon be produced. We did not anticipate that the government
12 would decide *not* to produce the complete Cellebrite files of Abramoff's phone. The government
13 has provided us no reason for not producing the phone. Nor has the government provided a
14 timeline for doing so, even though we specifically requested this information in writing on May
15 10, 2023.

16 7. On May 5, 2023, the date by which the government told the court it was going to
17 produce the Robert Abramoff materials that had been removed from the Abramoff Cellebrite
18 image, we received about 211 pages of images from extraction reports of one or more threads
19 containing messages to and/or from Robert Abramoff. Several of the conversation records were
20 produced multiple times, many of the messages cannot be read because they are cut off mid-
21 sentence, and some of the messages contain redactions.

22 8. I reached out to the government on May 15, 2023, to let the prosecutors know of
23 the issues with their non-compliant log for Robert Abramoff materials, which was prepared by
24 Abramoff's lawyer (even though Abramoff is not a party to the case and has declined to
25 intervene). I offered to discuss the topic before filing our status report in response to Judge
26 Beeler's direction that we raise any disagreements with the court. The government declined to
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28

1 engage in any meet and confer.

2 9. In a letter dated January 25, 2023, AUSA Weingarten informed us that the
3 Cellebrite files for Erickson's phone were deleted "when [his] case was closed in March 2022 as
4 part of standard FBI procedure, so no Cellebrite files exist." We had sent the government
5 discovery requests on March 7, 2022 for statements by Erickson and on July 15, 2022 for
6 Erickson's phone. The government later sent mixed messages on whether it has an image of
7 Erickson's phone, informing the Court: "The government previously informed the defense that
8 the extractions themselves were destroyed in March 2022, but further investigation has revealed
9 simply that March 2022 is when the casefile was formally closed. The team has not located any
10 records regarding when those extractions were destroyed." Dkt. 158 at 6:13-16. Since then,
11 when we have asked the government what they have determined concerning the existence of
12 Erickson's phone, the government has declined to tell us whether it still possesses Erickson's
13 device, extraction reports relating to that device, or materials relating to any destruction of the
14 device.

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16
17 DATED: May 18, 2023

KING & SPALDING LLP

18 By: /s/Kerrie C. Dent

19 **KERRIE C. DENT (*Pro Hac Vice*)**

20 **Attorneys for Defendant**
21 **ROWLAND MARCUS ANDRADE**